



## **LIBRARY OF CONGRESS**

### **U.S. Copyright Office**

#### **37 CFR Part 201**

**[Docket No. 2018-6]**

### **Streamlining the Administration of DART Royalty Accounts and Electronic Royalty Payment Processes**

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Notice of Proposed Rulemaking.

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**SUMMARY:** The Copyright Office is proposing to establish a regulation regarding its procedures for closing out royalty payments accounts under section 1005, and updating its regulations governing online payment procedures for cable, satellite, and digital audio recording technology (“DART”) statements of account to no longer require that payments be made in a single lump sum. These amendments are intended to improve the efficiency of the Copyright Office’s Licensing Division operations.

**DATES:** Written comments must be received no later than 11:59 p.m. Eastern Time on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office website at <https://www.copyright.gov/rulemaking/dartfunds>. If electronic submission of comments is not feasible due to lack of access to a computer

and/or the internet, please contact the Office using the contact information below for special instructions.

**FOR FURTHER INFORMATION CONTACT:** Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov*, or Jalyce Mangum, Attorney-Advisor, by email at *jmang@copyright.gov*. Each can be contacted by telephone by calling (202) 707-8350.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. The Audio Home Recording Act of 1992 and DART Royalty Funds*

The Audio Home Recording Act of 1992 (AHRA)<sup>1</sup> amended title 17 to “provide a legal and administrative framework within which digital audio recording technology may be made available to consumers,”<sup>2</sup> including to implement a royalty payment system regarding the importation, manufacture, and distribution of digital audio recording devices or media. Digital audio recording devices are defined as “any machine or device of a type commonly distributed to individuals for use by individuals . . . that is capable of[] making a digital audio copied recording for private use.”<sup>3</sup> Congress intended “importers and manufacturers” to “bear the cost of royalty fees,” which would then be distributed to owners of the rights to musical works and sound recordings.<sup>4</sup> The AHRA also requires digital audio recording devices to incorporate copying controls to prevent piracy of digital audio recordings.<sup>5</sup> Manufacturers, importers, and distributors of devices

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<sup>1</sup> See Pub. L. 102-563, 106 Stat. 4237 (1992).

<sup>2</sup> H.R. Rep. No. 102-873(I), at 9 (1992).

<sup>3</sup> 17 U.S.C. 1001(3).

<sup>4</sup> S. Rep. No. 102-294, at 39 (1992); see also 17 U.S.C. 1006(a)(1).

<sup>5</sup> 17 U.S.C. 1002(a).

with proper copying controls and who pay royalties are not liable for copyright infringement to the extent their products are used to make copies of sound recordings.<sup>6</sup>

Congress delegated to the Copyright Office and the Copyright Royalty Tribunal (“CRT”)—a predecessor to the system administered by the Copyright Royalty Judges (“CRJs”)—authority to administer the royalty system under chapter 10.<sup>7</sup> Under section 1003, the importer or manufacturer of a digital audio recording device or media must file a notice with the Register of Copyrights, as well as quarterly and annual statements of account with respect to distribution, accompanied by royalty payments.<sup>8</sup> The Register receives all royalty payments and, after deducting the reasonable costs incurred for administering this license, deposits the balance with the Treasury of the United States.<sup>9</sup> These royalty payments are divided between a sound recording fund and a musical works fund, which are in turn subdivided into various subfunds, referred to collectively as the DART subfunds.<sup>10</sup> The royalty payments attributed to these subfunds are allocated to copyright owners pursuant to distribution orders issued in proceedings before the CRJs, as described in section 1007 and in various provisions of chapter 8 of title 17. The Licensing Division of the Copyright Office administers the DART subfunds and distributes them pursuant to the CRJs’ distribution orders.<sup>11</sup>

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<sup>6</sup> See *Alliance of Artists and Recording Cos. v. Gen. Motors Co.*, 162 F. Supp. 3d 8, 10 (D.D.C. 2016).

<sup>7</sup> See 17 U.S.C. 1003; see also S. Rep. No. 102-294, at 39 (“Administration of the royalty system is the dual responsibility of the Copyright Office and the CRT”).

<sup>8</sup> 17 U.S.C. 1003(b), (c)(1), (c)(3).

<sup>9</sup> *Id.* at 1005.

<sup>10</sup> *Id.* at 1006(b).

<sup>11</sup> See, e.g., Order Granting Claimants’ Request for Partial Distribution of 2005 Through 2008 DART Music Funds Royalties, Docket No. 2010-8 CRB DD 2005-2008 (MW), available at <https://www.crb.gov/orders/2011/04411-order-granting-claimants-partial-distribution.pdf> (last visited May 16, 2018).

After the CRJs have issued a final distribution order with respect to a DART subfund, and the Licensing Division has distributed the royalty funds pursuant to that order, small royalty balances can still be attributed to these subfunds unless they have been formally closed out by the Copyright Office. These attributions can occur as a result of subsequent deposits made by payees, or, more often, in the course of routine review and adjustments made in the years following each appropriation, for example, when anticipated contract expenditures or other overhead expenses come in slightly under budget.

Maintaining these small amounts in separate funds creates administrative expenses for the Licensing Division, and the transaction costs associated with distributing such small amounts of money can exceed the amount of money remaining in these accounts. Under section 1005, the Copyright Office may, “in the Register’s discretion,” close out the royalty payments account for a calendar year four years after the close of that year, and attribute “any funds remaining in [the] account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year.”<sup>12</sup> In practice, the Register has not previously established a procedure to exercise this discretion. The Copyright Office now proposes to close out funds or subfunds at any time four years after the close of the calendar year for a given fund, if that fund is subject to a final distribution order. In accordance with section 1005, the Register will treat any funds remaining in such account or subsequent deposits as attributable to the closest succeeding calendar year. The Office proposes to codify this practice in its proposed rule, and seeks comment on this proposal.

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<sup>12</sup> 17 U.S.C. 1005.

### *B. Payment of Royalty Fees by Electronic Funds Transfer*

The Licensing Division administers various statutory licensing schemes, including those requiring the submission of statements of account by cable systems, satellite carriers, and manufacturers or importers of digital audio recording devices and media.<sup>13</sup> Pursuant to its statutory authority, the Copyright Office has set out the requirements for payment of royalty fees under each of these statutory licenses by regulation.<sup>14</sup> One such requirement for all of these statutory licenses is that “[a]ll royalty fees shall be paid by a single electronic funds transfer.”<sup>15</sup> This language became effective in 2006, as part of the final rule requiring remitters to pay royalty payments by electronic funds transfer (“EFT”).<sup>16</sup>

In practice, however, the Office has found that the requirement that remitters make royalty payments for multiple statements of account in a single, lump sum payment is unnecessarily restrictive and has hampered ongoing modernization efforts. Accordingly, the Office proposes to remove the requirement that filers submit multiple SOAs in a single EFT payment for the relevant statutory licenses, specifically, by amending 37 CFR 201.11(f)(1), 201.17(k)(1), and 201.28(h)(1) to remove the requirement that royalty fees must be paid in “a single” payment. The current regulatory requirement that funds be submitted through EFT will remain in place.

Because the Office seeks to implement this reform expeditiously for reasons of administrative efficiency, it is separating this minor proposed change from a larger ongoing rulemaking, noticed in December 2017, that proposes to address a wider and

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<sup>13</sup> See 17 U.S.C. 111 (d)(1), 119 (b)(1), 122(a)(5), 1003(c).

<sup>14</sup> 37 CFR 201.11(f)(1), 201.17(k)(1), 201.28(h)(1).

<sup>15</sup> *Id.*

<sup>16</sup> Electronic Payment of Royalties, 71 FR 45739 (Aug. 10, 2006).

more complex set of issues related to statement of account reporting practices, particularly the section 111 license for cable systems.<sup>17</sup> The Office has extended the public comment period for that December 2017 NPRM to October 4, 2018.<sup>18</sup> Meanwhile, while the change removing the requirement that royalty fees must be paid in “a single” payment is intended to be technical, the Office solicits public comment on this discrete issue as part of this current rulemaking.

### **List of Subjects in 37 CFR Part 201**

Copyright, General provisions.

### **Proposed Regulations**

For the reasons set forth in the preamble, the Copyright Office proposes amending 37 CFR part 201 as follows:

#### **PART 201—GENERAL PROVISIONS**

1. The authority citation for part 201 continues to read as follows:

**Authority:** 17 U.S.C. 702.

#### **§ 201.11 [Amended]**

2. Amend § 201.11 by removing “a single” from paragraph (f)(1).

#### **§ 201.17 [Amended]**

3. Amend § 201.17 by removing “a single” from paragraph (k)(1) introductory text.

#### **§ 201.28 [Amended]**

4. Amend § 201.28 by removing “a single” from paragraph (h)(1) introductory text.

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<sup>17</sup> Statutory Cable, Satellite, and DART License Reporting Practices, 82 FR 56926, 56935-36 (Dec. 1, 2017).

<sup>18</sup> Statutory Cable, Satellite, and DART License Reporting Practices, 83 FR 26229 (Jun. 6, 2018).

5. Add § 201.31 to read as follows:

**§ 201.31 Procedures for closing out royalty payments accounts in accordance with the Audio Home Recording Act**

(a) *General.* This section prescribes rules pertaining to the close out of royalty payments accounts in accordance with 17 U.S.C. 1005.

(b) In the Register's discretion, four years after the close of any calendar year, the Register of Copyrights may close out the royalty payments account for that calendar year, including any sub-accounts, that are subject to a final distribution order under which royalty payments have been disbursed. Following closure of an account, the Register will treat any funds remaining in that account, or subsequent deposits that would otherwise be attributable to that calendar year, as attributable to the succeeding calendar year.

**Dated:** July 2, 2018.

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**Regan A. Smith,**  
*General Counsel and*  
*Associate Register of Copyrights*

**[BILLING CODE 1410-30-P]**

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